

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Jean Johnstone as a

nominee for Antonia Drake

Plaintiff(s),

vs.

Bank of America

Defendant(s).

)
1:12-cv-08552

)
Judge Samuel Der-Yeghiayan
Magistrate Judge Young B. Kim

)
Case No.

02
FILED

OCT 24 2012

THOMAS G BRUTON
CLERK, U S DISTRICT COURT

COMPLAINT FOR VIOLATION OF CONSTITUTIONAL RIGHTS

This form complaint is designed to help you, as a pro se plaintiff, state your case in a clear manner. Please read the directions and the numbered paragraphs carefully. Some paragraphs may not apply to you. You may cross out paragraphs that do not apply to you. All references to "plaintiff" and "defendant" are stated in the singular but will apply to more than one plaintiff or defendant if that is the nature of the case.

1. This is a claim for violation of plaintiff's civil rights as protected by the Constitution and laws of the United States under 42 U.S.C. §§ 1983, 1985, and 1986.
2. The court has jurisdiction under 28 U.S.C. §§ 1343 and 1367.
3. Plaintiff's full name is Jean Johnstone as a nominee for Antonia Drake.

If there are additional plaintiffs, fill in the above information as to the first-named plaintiff and complete the information for each additional plaintiff on an extra sheet.

4. Defendant, Bank of America, is
(name, badge number if known)

an officer or official employed by _____;
(department or agency of government)

or

an individual not employed by a governmental entity.

If there are additional defendants, fill in the above information as to the first-named defendant and complete the information for each additional defendant on an extra sheet.

5. The municipality, township or county under whose authority defendant officer or official acted is Will County. As to plaintiff's federal constitutional claims, the municipality, township or county is a defendant only if custom or policy allegations are made at paragraph 7 below.

6. On or about 10-23-2012, at approximately 10 a.m. p.m.
(month, day, year)
plaintiff was present in the municipality (or unincorporated area) of Will
Will County, in the County of Will County
State of Illinois, at 428 Raven Road, Shorewood, IL 60431
(identify location as precisely as possible)

when defendant violated plaintiff's civil rights as follows (*Place X in each box that applies*):

- arrested or seized plaintiff without probable cause to believe that plaintiff had committed, was committing or was about to commit a crime;
- searched plaintiff or his property without a warrant and without reasonable cause;
- used excessive force upon plaintiff;
- failed to intervene to protect plaintiff from violation of plaintiff's civil rights by one or more other defendants;
- failed to provide plaintiff with needed medical care;
- conspired together to violate one or more of plaintiff's civil rights;

Other:

Quiet title Due process
Equal Protection of the Law

7. Defendant officer or official acted pursuant to a custom or policy of defendant municipality, county or township, which custom or policy is the following: (*Leave blank if no custom or policy is alleged*): _____

8. Plaintiff was charged with one or more crimes, specifically:

9. (*Place an X in the box that applies. If none applies, you may describe the criminal proceedings under "Other"*) The criminal proceedings
 are still pending.
 were terminated in favor of plaintiff in a manner indicating plaintiff was innocent.¹
 Plaintiff was found guilty of one or more charges because defendant deprived me of a fair trial as follows _____

 Other: _____

¹Examples of termination in favor of the plaintiff in a manner indicating plaintiff was innocent may include a judgment of not guilty, reversal of a conviction on direct appeal, expungement of the conviction, a voluntary dismissal (SOL) by the prosecutor, or a *nolle prosequi* order.

10. Plaintiff further alleges as follows: (*Describe what happened that you believe supports your claims. To the extent possible, be specific as to your own actions and the actions of each defendant.*)

SEE Attached
Sheet Exhibits)

11. Defendant acted knowingly, intentionally, willfully and maliciously.

12. As a result of defendant's conduct, plaintiff was injured as follows:

Actual and Punitive damages on account
of the Defendants massive disorganized
conduct and open disregard for the Law
Plaintiff Seeks one-million-Dollars Also SEEKS
Injunctive Relief

13. Plaintiff asks that the case be tried by a jury. Yes No

On or about October 23, 2012 Plaintiff Jean Johnstone as nominee for Antoina Drake, discovered that after reviewing their records of deeds recordings and assignment agreement to Bank of America was incorrectly filled out. It purportedly seeks to receive from Mortgage Electronic Registration System (MERS) an assignment of Mortgage on Plaintiff's property located at 428 N. Raven Rd Shorewood, IL. 60431 Pin.#06-09-102-008-0000 Will County. After reviewing the assignment it was found that MERS does not say under what authority or authorization they had to transfer or convey the Plaintiff's mortgage note. In particular they say they are only the (Nominee) to the property and under that particular agreement they will need more authority to transfer Plaintiff's mortgage to Bank of America or any other person or company. Plaintiff obtained interest in this particular mortgage on or about September 29, 2006 and Encore Credit Corporation was the original lender. Bank of America and MERS have an invalid assignment agreement between each other. See Exhibit (A) Assignment Agreement. Therefore Plaintiff does not owe Bank of America any money and they continue to harass Plaintiff to pay them money on a mortgage that they have no legal interest in. Plaintiff requests a Quiet Title determination would resolve this issue to determine the rightful owner of this particular mortgage note

.Robo-Signer:

On the assignment by MERS there is a name (Liquenda Allotey). This person stated on the assignment that he was the Vice President for Mortgage Electronic Registration System, which is "false." MERS has no employees. And this person is not the Vice President of MERS and never has been. See Exhibit (A) Assignment Agreement

- 1). MERS was acting as a Nominee for Encore Credit Corporation, who was the original lender therefore:
 - a. MERS did not own the mortgage it could not transfer the beneficial interest of the mortgage to another.
 - b. A mortgage is merely security for a debt, it cannot exist independent of the debt and thus only a transfer or assignment of only the mortgage without the debt is a (nullity) and no interest is acquired by it.
 - c Defendant Bank of America never properly recorded a claim of ownership in the subject property, hence, they lack standing and lack subject matter jurisdiction to defend a claim against subject property.

Any attempt to transfer the beneficial interest of a mortgage without ownership of mortgage is (Void) under Illinois law. Since MERS transferred the mortgage by way of fraudulent conveyance under Illinois law Defendant Bank of America intentionally and with wanton and willful disregard for the law. violated Plaintiff's rights to due process of law, and equal protection of the law under the United States Constitution of America.

Plaintiff Bank of America contend that there is an actual controversy surrounding the true and correct owner of their property and until this ownership interest is determined Defendant J.P Morgan Bank of America is not entitled to receive any proceeds from Plaintiff in connection with the mortgage on his

property because it would be unjust enrichment for Defendant to enrich themselves as a result of improperly signed and transferred property.

Plaintiff's request that this honorable court enter a Quiet Title Judgment determining that they are the owner of the property and that the Defendant has no rights, title, estate lien or interest in the property.

Plaintiff further requests declaratory and injunctive relief and also he seeks a judicial determination of his rights and duties as to the note and mortgage, and any other claims of debt or other legal claims to be restrained from proceeding during the pendency of this action.

R2006174725_1

This Instrument Prepared By:



After Recording Return To:
ENCORE CREDIT CORP.
1833 ALTON PARKWAY
IRVINE, CALIFORNIA
92606

Office of Plaintiff's counsel
Pierce & Associates P.C.
redacted the SS# and/or
loan number.

LAURIE MOPHILLIPS ZOP R 2006174725
Will County Recorder Page 1 of 20

DET Date 10/18/2006 Time 11:51:48
Recording Fees: 40.75
IL Rental Hang Support Prog: 10.00

(Space Above This Line For Recording Data)

Loan Number: [REDACTED]

MORTGAGE

MIN: 100180100003674338

272161IML

Mail To:
Law Title Oak Brook
800 Enterprise Dr.
Ste. 205
Oak Brook, IL 60521

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

- (A) "Security Instrument" means this document, which is dated **SEPTEMBER 29, 2006**, together with all Riders to this document.
(B) "Borrower" is **ANTONIA DRAKE, A SINGLE WOMAN**

Borrower is the mortgagor under this Security Instrument.

(C) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the mortgagee under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(D) "Lender" is **ENCORE CREDIT CORP.**

Lender is a **CALIFORNIA CORPORATION** organized
and existing under the laws of **CALIFORNIA**
Lender's address is **1833 ALTON PARKWAY, IRVINE, CALIFORNIA 92606**

(E) "Note" means the promissory note signed by Borrower and dated **SEPTEMBER 29, 2006**.
The Note states that Borrower owes Lender **THREE HUNDRED THOUSAND AND 00/100**
Dollars (U.S. \$ 300,000.00) plus interest.
Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than **OCTOBER 1, 2036**.

(F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

R2008063868_1

ASSIGNMENT OF MORTGAGE**PREPARED BY:**

Freedman Anselmo Lindberg & Rappe, LLC
 1807 W. Diehl Road, Suite 333
 Naperville, IL 60563-1890

MAIL TO:

Freedman Anselmo Lindberg & Rappe, LLC
 1807 W. Diehl Road, Suite 333
 Naperville, IL 60563-1890

R2008063868
 Receipt # T2008063868
Laurie McPhillips Will County Recorder JP
 JD Date 05/16/2008 Time 10:58:21
 Recording Fees: \$24.75
 IL Rental Hang. Support Program: \$10.00

KNOWN ALL MEN by these presents, that Mortgage Electronic Registration Systems, Inc. as nominee for Encore Credit Corp. Its Successors and/or Assigns, in consideration of the sum of Ten and 00/100 Dollars, [\$10.00] has transferred to LaSalle Bank National Association, As Trustee For Certificateholders Of Bear Stearns Asset Backed Securities I LLC, Asset-backed Certificates, Series 2006-HE10 all title to and interest in the Mortgage dated September 29, 2006 and recorded October 18, 2006 as document number R2006174725, in the WILL County Recorder's Office, for the sum of \$300,000.00 executed by Antonia Drake to Mortgage Electronic Registration Systems, Inc. as nominee for Encore Credit Corp. Its Successors and/or Assigns.

The legal description of the property being assigned is:

LOT 91 IN ROLLINGWOOD UNIT ONE, A SUBDIVISION OF PART OF THE EAST 1/2 OF THE NORTHWEST 1/4 OF SECTION 9, TOWNSHIP 35 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT RECORDED JUNE 28, 1999 AS DOCUMENT NUMBER R99-080676, ALL IN THE VILLAGE OF SHOREWOOD, WILL COUNTY, ILLINOIS.

Permanent Real Estate Index Number(s): 06-09-102-008-0000
 Address(es) of Real Estate: 428 North Raven Road, Shorewood, IL 60431
 MIN Number: 100180100003674338
 EMC address: 2780 Lake Vista Drive, Lewisville, TX 75067

IT WITNESS WHEREFORE, this Assignment is executed this 7 day of MAY, 2008.

Liquenda Allote / VP
 Mortgage Electronic Registration Systems, Inc. as nominee for Encore Credit Corp. Its Successors and/or Assigns

Given under my hand and official seal,

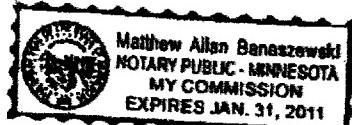
this 7 day of MAY / 2008

Commission expires 11/31/2011

NOTARY PUBLIC

State of Minn, County of Hennepin. I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY, that an agent of that Mortgage Electronic Registration Systems, Inc. as nominee for Encore Credit Corp. Its Successors and/or Assigns, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

R646



14. Plaintiff also claims violation of rights that may be protected by the laws of Illinois, such as false arrest, assault, battery, false imprisonment, malicious prosecution, conspiracy, and/or any other claim that may be supported by the allegations of this complaint.

WHEREFORE, plaintiff asks for the following relief:

- A. Damages to compensate for all bodily harm, emotional harm, pain and suffering, loss of income, loss of enjoyment of life, property damage and any other injuries inflicted by defendant;
- B. *(Place X in box if you are seeking punitive damages.)* Punitive damages against the individual defendant; and
- C. Such injunctive, declaratory, or other relief as may be appropriate, including attorney's fees and reasonable expenses as authorized by 42 U.S.C. § 1988.

Plaintiff's signature: Jean Johnstone as an nominee for
Antonia Drake

Plaintiff's name (print clearly or type): Jean Johnstone

Plaintiff's mailing address: 428 Raven Road

City Shorewood State IL ZIP 60431

Plaintiff's telephone number: () _____

Plaintiff's email address (*if you prefer to be contacted by email*): _____

15. Plaintiff has previously filed a case in this district. Yes No

If yes, please list the cases below.

Any additional plaintiffs must sign the complaint and provide the same information as the first plaintiff. An additional signature page may be added.